IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.Rev.Pet.No. 2065 of 2007()

CRA NO. 220/2005 of ADDL. SESSIONS (ADHOC-I) COURT, KALPETTA
S.T. NO. 204/2004 of JUDICIAL FIRST CLASS MAGISTRATE-I, SULTHAN BATHERY.

REVN. PETITIONER: APPELLANT/ACCUSED

M.BABU, S/O RAMAN, AGED 35 YEARS,
VIJAYA AUTO SERVICES, KALPETTA, WAYANAD.

BY ADV. SRI.M.V.AMARESAN

RESPONDENTS: RESPONDENTS/COMPLAINANTS
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1. SURYA BINDHU, W/O HIROSHI,
MATTUVAYAL (H), NENMENI, MALANKARA,
SULTHAN BATHERY.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. P. RAVINDRA BABU, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. R.P. NO. 2065 OF 2007

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Dated this the 6th day of June 2007

O R D E R

The revision petitioner is the accused in S.T No. 204/2004 in the file of Judicial First Class Magistrate-I, Sulthan Bathery with respect to the offence under Section 138 of the Negotiable Instruments Act.

2. The prosecution case is that he had borrowed an amount of Rs.50,000/- from her during the last week of June, 2003, agreeing to repay the same within one month and issued the impugned cheque. The same when presented got dishonoured. The lawyer notice demanding payment is replied to raising false contentions. The cheque was dishonoured for want of funds in the account. The evidence adduced in the matter consisted of the testimony of PW1, Exts. P1 to P5 and the defence examined DW1.

3. The contention of the revision petitioner is that the complainant is a house wife and there is no possibility of her lending money to a stranger whom she has described as a friend of her brother. A number of discrepancies are in the evidence of PW1 and the same cannot be relied on to establish the execution of the cheque. The evidence of DW1 is that he acted as an intermediary and that a sum of

Rs.35,000/- only was borrowed by the revision petitioner and that the amount was taken from the brother of the complainant and that the same was repaid. Just on the basis of the oral testimony of PW1 I find that it cannot be held that the statutory presumptions have been rebuted. Both the courts below have examined the evidence in detail. The contention raised herein is that PW1 has testified mistakenly with respect to the cheque belonging to a particular bank. The above contention has not been raised before both the courts below. In the circumstances, I find no reason to deviate from the findings of the courts below. In the circumstances, the revision petition is dismissed in limine.

All the same considering the plea of the counsel for the revision petitioner, the revision petitioner is granted three months time from today onwards to pay the amount of compensation. The revision petitioner shall appear before Judicial First Class Magistrate-I, Sulthan Bathery on **05.12.2007** to receive sentence.

K.R. UDAYABHANU, JUDGE.

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